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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MM Docket No. 93-277

In the Matter of

Amendment of Section 73.202(b), RM-8324  
Table of Allotments,  
FM Broadcast Stations,  
(Warrior, Alabama)

**NOTICE OF PROPOSED RULE MAKING**

Adopted: October 29, 1993; Released: November 17, 1993

Comment Date: January 10, 1994

Reply Comment Date: January 25, 1994

By the Assistant Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of North Jefferson Broadcasting Company, Inc. ("petitioner"), permittee of Station WLBI(FM), Channel 254A, Warrior, Alabama, seeking the substitution of Channel 254C3 for Channel 254A at Warrior and modification of its authorization to specify operation on the higher powered channel.<sup>1</sup> Petitioner stated its intention to apply for Channel 254C3 if allotted to Warrior, as requested.

2. We believe the public interest would be served by proposing the substitution of Channel 254C3 for Channel 254A at Warrior since it could provide an expanded coverage area FM service to the community.

**TECHNICAL STATEMENT**

3. Channel 254C3 can be allotted to Warrior at the petitioner's specified site, located 9.5 kilometers (5.9 miles) northwest of the community at coordinates 33-53-04 and 86-52-01, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules.

4. The petitioner's modification request at Warrior conforms with the provisions of Section 1.420(g) of the Commission's Rules. Therefore, we shall propose to modify the permit of Station WLBI(FM) without entertaining competing expressions of interest in the use of Channel 254C3 at Warrior, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

5. In view of the above, the Commission believes it is appropriate to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Warrior, Alabama, as follows:

	City	Present	Channel No. Proposed
	Warrior, Alabama	254A	254C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **January 10, 1994**, and reply comments on or before **January 25, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Richard J. Hayes, Esq.  
13809 Black Meadow Road  
Spotsylvania, VA 22553

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who

<sup>1</sup> The availability of Channel 254C3 at Warrior results from a Joint Request for Approval of Settlement Agreement between the petitioner herein and Radio South, Inc. ("RSI"), licensee of Station WFFN(FM), Channel 237A, Cordova, Alabama, whereby RSI withdrew its petition for reconsideration in MM Docket No.

90-476. See 8 FCC Rcd \_\_\_\_\_ (1993). Although RSI had requested a modification of its license for Station WFFN(FM) to specify operation on Channel 254C3 at Cordova, Alabama, in MM Docket No. 90-476, it was subsequently modified to Channel 223A. See 7 FCC Rcd 5489 (1992).

filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley  
Assistant Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be

served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.